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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,325	11/20/2003	Norihisa Matsumoto	03694/LH	2631

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FRISHAUF, HOLTZ, GOODMAN & CHICK, PC  
767 THIRD AVENUE  
25TH FLOOR  
NEW YORK, NY 10017-2023

EXAMINER
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MAMMEN, NATHAN SCOTT

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/719,325

Applicant(s)

MATSUMOTO ET AL.

Examiner

Nathan S Mammen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/13/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by JP Application 62-106405, cited by Applicant.

The JP '405 application discloses a blade mounting structure for a bulldozer. The structure comprises a set of left (5-2) and right (5-1) straight frames which swingably connect a left portion and a right portion of a blade and a vehicle body. A single arm (9) connects one of the straight frames and a substantially central portion of the blade.

3. Claim 1, 3, 5, 7, 9, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Applicant's Admitted Prior Art (AAPA) or, alternatively, JP 2546933 (cited by Applicant).

In Fig. 8, Applicant admits a known blade mounting structure of a dozer. Applicant has indicated that the known structure is similar to that described in JP 2546933. Thus, the following detailed comparison between the claimed structure and the known structure applies equally to the AAPA or the JP '933 reference.

In the known blade mounting structure, left and right portions of a blade are connected to a vehicle main body by left and right straight frames (3) to be swingable up and down and to the left and right. The set of straight frames and the blade are connected by a set of left (4a) and right (4) cylinders. The blade mounting structure further

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comprises an arm (2) for connecting only any one of the left and right straight frames and a substantial central portion of the blade (5). The connection point of the arm is provided at an upper portion from a line connecting points of the left and right straight frames.

(See, e.g., JP '933, Fig. 2).

With regards to claim 1, it should be noted that the limitation for the arm only requires that the arm connects "a single one of said set of left and right straight frames." The open language of the claim ("comprising") means that the prior art blade mounting structure of providing two arms fulfills the claim limitations. See the Response to Arguments, below.

Regarding claim 5: AAPA also discloses that the mounting structure includes a hydraulic cylinder (4) for tilt drive and a support member (4a).

4. Claims 1, 2, 7, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,441,092 to Drone.

The Drone '092 patent discloses a blade mounting structure having left and right portions of a blade are connected to a vehicle main body by left and right straight frames (11, 12) to be swingable up and down and to the left and right. The set of straight frames and the blade are connected by a set of left (21) and right (22) cylinders. The blade mounting structure further comprises an arm (26, 27) for connecting only any one of the left and right straight frames and a substantial central portion of the blade. The arm is variable in length.

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*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA).

The AAPA discloses that the mounting structure of the bulldozer includes a hydraulic cylinder (4) for providing tilt and a support member (4a). The AAPA does not disclose that the mounting structure includes two hydraulic cylinders, instead of one cylinder and the support member. However, providing two hydraulic cylinders instead of one cylinder and a support member would have been obvious to one having ordinary skill in the art, since Applicant has not disclosed any criticality to the second cylinder (see Specification, page 14), and, due to the remarkable similarity between the AAPA and the instant invention, it appears that utilizing a second cylinder is an obvious matter of design choice.

7. Claims 2, 4, 8, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) or, alternatively, JP 2546933 (cited by Applicant) in view of U.S. Patent No. 3,656,558 to Kollinger.

The AAPA and JP '933 reference discloses the claimed invention, as stated in paragraph 2 above, except for the length of the arm being variable. The Kollinger '558 patent teaches that it is known in the art to provide the arm connecting a straight frame to a blade with the capability of being varied in length (col. 4, lines 57-61). It would have

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been obvious to one having ordinary skill in the art at the time the invention was made to provide the blade mounting structure of the AAPA and JP '933 patent with a variable length arm as taught by the Kollinger '558 patent, in order to ease the mounting and adjustment of the arms.

### ***Response to Arguments***

8. Applicants' arguments filed 9/13/04 have been fully considered but they are not persuasive.

As stated in paragraph 3 above, Applicants' choice of using an open claim language (i.e, using "comprising" as the transitional phrase) means that as long as the prior art has, at a minimum, the structure claimed then it is irrelevant if the prior art has more structure. It is true that the AAPA and the JP application disclose more than one arm. However, the AAPA and JP application do disclose a single arm connecting a single straight frame. Put differently, the AAPA and JP application clearly disclose double the structure claimed with respect to the arm connecting the straight frames; but this duplicative structure inherently encompasses the single structure claimed. If Applicants wish the claim to be exclusive of any additional structure, then Applicants must use "closed" transitional phrases (e.g., "consisting of"). See MPEP 2111.03

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

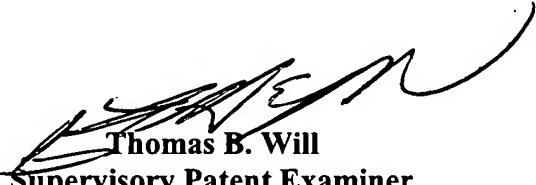
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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

**NSM**  
**11/22/04**

**Nathan S. Mammen**